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IN THE

Supreme Court of the United States

OCTOBER TERM 1942

No. .....

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH,
Petitioners,

against

ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES, and LOUIS LOIZIDES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioners, Cafeteria Employees Union, Local 302, and William Mesevich, respectfully pray that a *writ of certiorari* issue to review the order of the Court of Appeals of the State of New York, affirming an order of the Appellate Division of the Supreme Court of the State of New York, in and for the First Department, which said last mentioned order affirmed a judgment of the Supreme Court of the State of New York, County of the Bronx, in favor of Elias Tsakires and others, as plaintiffs, and against

these Petitioners, as defendants, whereby Petitioners were enjoined and restrained from stationing pickets at or near a certain cafeteria or restaurant located at 726 East Tremont Avenue, Borough of the Bronx, City of New York.

And in support of their petition, your Petitioners respectfully show to this Honorable Court:

A

Statement of the Matter Involved

This is one of a brace of cases brought at the same time by the same attorney and tried before the same judge in the Supreme Court of the State of New York, Bronx County (although a week apart); and argued at the same time in the Appellate Division of the Supreme Court of the State of New York, in and for the First Department, as well as in the Court of Appeals of the State of New York. They involve the same state of facts exactly, except for a difference in names, some of the dates, and other minor matters. In order, therefore, to avoid repetition, we respectfully refer to our petition in the matter of Cafeteria Employees Union and another, Petitioners, against Gus Angelos and others, submitted simultaneously herewith, which is herewith made part hereof, for a full statement of the facts involved, and we shall state here only the points wherein the facts in this case differ from those in the case just referred to. These are as follows:

1. The cafeteria involved in this case is located at 726 East Tremont Avenue, Borough of Bronx, City of New York; its owner is Louis Loizides (a brother of Demosthenes Loizides, involved in the accompanying application); the trade name used was "The Cosmo Cafeteria"; and the picketing commenced on the 14th day of April, 1939—one day earlier than in the accompanying case.

II. The findings and judgment were alike in both cases, except for immaterial differences, such as that the finding in the present case was that the pickets told prospective customers that there was a strike in the cafeteria in question, while in the accompanying case the pickets were found to have told prospective customers that by patronizing the cafeteria there in question the patrons would be helping the cause of Fascism.

There were no separate opinions written in this case, but the Judges who wrote the opinions in the accompanying suit filed memoranda as follows:

Judge Rippey, who wrote the prevailing opinion in the *Angelos* case filed the following memorandum:

> "The controlling facts in this case do not substantially or materially differ from those in the case of *Angelos, et al.*, against the same defendants in which a decision is being handed down herewith. The unlawful conduct of the defendants here found to exist is similarly subject to judicial restraint. The judgment appealed from should be affirmed, with costs."

Judge Desmond, who wrote the dissenting opinion in the *Angelos* case, wrote the following memorandum:

> "This case is so nearly identical with *Angelos* v. *Mescvich*, decided herewith, that it must follow the same course. The judgment should be reversed and the complaint dismissed, with costs."

B

The Question Presented

The sole question presented is:

Is the decree of the Supreme Court of the State of New York, affirmed by the Court of Appeals of the State of New York, absolutely prohibiting the orderly and peaceful picketing by Cafeteria Employees Union, Local 302, of the cafeteria located at 736 East Tremont Avenue, Borough

of the Bronx, City of New York, in the course of a labor dispute violative of the rights of your Petitioners under the provisions of the Constitution of the United States and the Articles of Amendment thereto as construed by this Court?

C.

Reasons Relied On For the Allowance of the Writ

The reasons for the allowance of the writ in this case are the same as those stated in our application for a *writ of certiorari* in the other case involved in this brace of cases, the case which in the State Court bore the title of *Angelos, et al.* v. *Mesevich*, and need not therefore be stated here at length. We therefore respectfully refer the Court to our Petition in that case.

For the reasons stated in that Petition, your Petitioners verily believe that this application presents a case cognizable under the rules of this Honorable Court, and one eminently proper for review by this Honorable Court.

WHEREFORE, your Petitioners respectfully pray that a *writ of certiorari* be issued out of and under the seal of this Honorable Court, directed to the Court of Appeals of the State of New York, commanding that Court to certify and to send to this Court for its review, a full and complete transcript of the record of all proceedings in the said suit, and to stand to and abide by such order and direction as your Honorable Court shall deem meet and the circumstances of the case require, and that your Petitioners may have such other and further relief or remedy in the premises as to this Honorable Court may seem just and proper.

Dated: New York, February 15, 1943.

LOUIS B. BOUDIN,
Of Counsel for Petitioners.

IN THE

Supreme Court of the United States

OCTOBER TERM 1942

No. .....

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH,
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against
ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES, and LOUIS LOIZIDES.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

For the reasons stated in the foregoing Petition, it is unnecessary to state here at length the arguments in support of this Petition; and we respectfully refer the Court to our brief in support of the accompanying application in the case known in the state courts as *Angelos, et al. v. Mesevich*, for a statement of our general argument in support of the Petition herein.

There is, however, one point which we shall discuss briefly here,—the point that might be raised by the minor difference in the findings in the two cases pointed out above. The Court will recall that in the accompanying case there was a finding by the trial court that the pickets told prospective customers that by patronizing the business of the

plaintiffs in that case, they would be helping Fascism. There is no such finding in this case. Instead thereof there is, however, a finding in this case that the signs carried by the pickets stated that there was a strike in the cafeteria in question in this case, while, as a matter of fact, there was no such strike. This finding, as is pointed out in the opinion of the minority of the Court of Appeals of the State of New York, is contrary to the evidence. And we respectfully submit that a judgment based on a finding which has no evidence whatever to support it is clearly wanting in *due process of law*.

It seems to us unnecessary to argue at length the proposition that the basic requirement of due process is that a judgment should be supported by evidence. Otherwise, the provision for due process of law contained in the Fourteenth Amendment would be utterly worthless,—since every judgment is, formally, based on a finding of guilt or liability after a hearing of the parties and the evidence adduced by them.

Aside from that, however, and assuming that the finding were based on evidence, that would not dispose of the constitutional problem involved,—the protection extended by the United States Constitution to free speech and free press against any abridgment or invasion by any State authority. On that assumption, the decision of the courts of the State of New York would amount to the legal doctrine that the State has a right to abridge, curtail or destroy, the right of free speech or free press as a punishment for a past abuse of the same. Clearly, that is contrary to the spirit of our constitutional system and the express provisions of the United States Constitution as construed by this Court.

It is manifest that neither in a criminal prosecution nor in a civil suit can a State court, either by way of punishment or retribution, deprive a defendant of his right *to speak or publish the truth in the future*, guaranteed to him by the Constitution of the United States. And it must be

borne in mind that the decree in question herein does not enjoin the petitioners from picketing in the future with untruthful signs, but with *any* signs whatsoever. Indeed, *all* picketing, with or without signs, is thereby prohibited,—apparently for all eternity.

CONCLUSION

This case is clearly one in which the public interest requires a full review by this Court of the serious constitutional questions involved. A *writ of certiorari* should therefore be granted by this Court so that a full argument of the constitutional questions raised may be had, and judgment directed by this Court in accordance with its interpretation of the constitutional rights involved.

Dated: New York, February 15, 1943.

Respectfully submitted,

Louis B. Boudin,
Of Counsel for the Petitioners.
20 West 43rd Street,
New York City.